IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Bail Appl..No. 4498 of 2007()

CRIME NO. 277/07 OF SULTHAN BATHERY POLICE STATION

PETITIONER/ACCUSED

SADASIVAN, AGED 50 YEARS,
S/O.RAMAKRISHNAN, GRANMA HOUSE,
KARIMBUMEL, PANAMARAM, WAYANAD.

BY ADV. SRI.C.V.MANUVILSAN
SRI.E.C.BINEESH
SRI.G.SUDHEER (THURAVOOR)
SRI.P.C.ANIL KUMAR

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY S.I. OF POLICE,
SULTHAN BATHERY, THROUGH PUBLIC PROSECUTOR,
HON'BLE HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4498 of 2007

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Dated this the 1st day of August, 2007

O R D E R

Application for anticipatory bail. The petitioner claims to be a human right activist working in the District of Wayanad. He has come to this Court seeking directions under Section 438 Cr.P.C. He, it would appear, apprehends arrest in Crime No.277 of 2007 and crime 278 of 2007. He had earlier moved the Sessions Court for anticipatory bail. The learned Sessions Judge also appears to have proceeded on the assumption that the petitioner is required to be arrested in both crimes. His application for anticipatory bail was dismissed by the learned Sessions Judge.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has nothing to do with the alleged. crimes. The Wayanad police is adopting an intolerant attitude towards human right activists. The petitioner is a social activist. But he has no connection with an Organisation by name 'Porattam', the members of which are alleged to have committed Crimes 277 and 278 of 2007. The petitioner in his capacity as a

social activist had occasion to raise objections against the unjustified conduct of a priest by name A.K. Varghese, the defacto complainant in Crime No.277 of 2007. Merely because of that, the petitioner has been unnecessarily brought into the array of accused in Crime 277 of 2007. Fanciful and exaggerated allegations have been raised. The petitioner does not deserve to endure the trauma of arrest and detention. It is prayed that appropriate directions under Section 438 Cr.P.C. may be issued in favour of the petitioner.

3. Notice was given. The learned Prosecutor first of all makes an unambiguous statement that the petitioner is not required to be arrested in Crime 278 of 2007. In view of that specific statement of the Prosecutor, anticipatory bail application need be considered only in respect of Crime 277 of 2007.

4. That crime was registered on 15.6.07 relating to an incident which took place in the house of the defacto complainant. About 12 workers of an Organisation by name 'Porattam' allegedly trespassed into the house of the defacto complainant armed with dangerous weapons. The said Organisation is alleged to be an Organisation of extremists. They had a dispute with the defacto complainant. On the allegation of the defacto

complainant a juvenile was earlier proceeded against, found guilty and convicted. Though he was a juvenile he was shown to be not a juvenile in the police records. That led to his trial and conviction by the ordinary courts. That fact has now been brought to the notice of the High Court before which revisional proceedings are now pending. The local activists of 'Porattam' had allegedly served a notice on the defacto complainant to make amends by compensating the victim and by making a public apology. The defacto complainant did not allegedly comply with the said demand. Infuriated with such conduct of the defacto complainant, a group of members of 'Porattam' are alleged to have indulged in the overt acts in the house of the defacto complainant. The petitioner admittedly was not one of those, who had gone to the house of the defacto complainant.

5. What then is the allegation against the petitioner? The learned Prosecutor submits that the crux of the allegation against the petitioner is that on the night of 14.6.07 a conspiracy was hatched by members of 'Porattam' at the house of one Annamma, an activist of such organisation. In the meeting which took place, the petitioner had taken part. He is alleged to have addressed the conspirators. The conspirators, including the petitioner, who were there in the house of Annamma, had allegedly taken a

decision to proceed to the house of the defacto complainant and indulge in the culpable overt acts. It is in furtherance of the decision of the conspiracy that the alleged incident took place. The prosecution therefore alleges that the petitioner is liable for the incident that took place in the house of the defacto complainant with the help of Section 120B I.P.C. This in short is the contention of the prosecution. Investigation is in progress. The learned Prosecutor submits that the police do want to arrest the petitioner and interrogate him. Such arrest and interrogation is essential for the proper resolution of the crimes, submits the Prosecutor.

6. The learned Prosecutor has placed the case diaries in both cases before me. It is unnecessary to refer to the allegations in crime 278 of 2007. The crux of the allegations is that a group of persons, who after carrying out the purpose of the conspiracy in the house of the defacto complainant, were returning from the said operation. On receipt of information, the police tried to chase and apprehend them. They allegedly attacked the police officials. A police official was attempted to be murdered and grievous hurt was caused to him. At any rate, in as much as the petitioner is not admittedly required to be arrested in Crime 278 of 2007, it is unnecessary to consider that aspect in any greater detail.

7. I have perused the case diary in Crime 277 of 2007. There are indications available in the case diary to show that the petitioner was present at the house of Annamma, where a group of persons had collected and some decisions were allegedly taken about the operation which was to take place in the house of the defacto complainant. It is premature for this court now to render an authentic finding as to whether such materials can be accepted and the allegations raised against the petitioner are credible. Suffice it to say that I find merit in the submission of the learned Prosecutor that arrest and interrogation of the petitioner is necessary in these circumstances.

8. The learned counsel for the petitioner then submits that the petitioner apprehends physical harm at the hands of the police, if he were to surrender before them. The petitioner's counsel only prays that the petitioner may be given opportunity to surrender before the learned Magistrate and seek regular bail. Without prejudice to the right of the police to ask for custody, such application for bail may be directed to be considered and disposed of by the learned Magistrate.

9. In the peculiar facts and circumstances of the case, I find merit in that prayer of the learned counsel for the petitioner. The petitioner can be

granted opportunity to surrender before the learned Magistrate and seek regular bail. If the Investigators want to make and the learned Magistrate feels the request to be justifiable, the question of grant of police custody can be considered by the learned Magistrate. The permission to the petitioner to surrender and seek bail will not in any way affect the powers of the police to seek custody of the petitioner.

10. The learned counsel for the petitioner then submits that unnecessarily allegation under Section 307 I.P.C. has been included only to ensure that the petitioner languishes in custody unnecessarily as the learned Magistrate will not be able to grant bail, the offence under Section 307 I.P.C. being triable exclusively by a Court of Sessions. The counsel, in these circumstances, prays that at any rate the allegation under Section 307 I.P.C. is totally unjustified and it may be clarified that the learned Magistrate should not refuse to consider the application for bail for the sole reason that Section 307 I.P.C. has also been included.

11. The learned Prosecutor was requested to explain the allegation under Section 307 I.P.C. Even accepting the entire allegations raised by the defacto complainant, no attempt of personal physical violence against any of the occupants of the defacto complainant was attempted. There was no

injury to any one. Of course, threat and intimidation are alleged to have been directed at the occupants of the house and the defacto complainant. But though the offenders had all the time in the world to inflict injury on the occupants, there is not a semblance of allegation that any attempt was made to cause injury to any of the occupants. That being the position, inclusion of Section 307 I.P.C., it must be clarified, should not stand in the way of the learned Magistrate considering the application for bail on merits. I am satisfied that this petition can be allowed in part and appropriate directions can be issued under section 438 Cr.P.C.

12. In the result:

(1) This application is allowed in part.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on or before 8.8.2007 at 11 a.m. He may file application for bail after giving sufficient prior notice to the learned Prosecutor in charge of the case. The learned Magistrate shall consider the application for bail filed by the petitioner as also the application for custody, if any, filed by the police and pass appropriate orders on such applications on the date of surrender

itself. While considering such applications the learned Magistrate shall ignore the allegations raised under Section 307 I.P.C.

(b) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 8.8.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(c) If the petitioner were arrested prior to his surrender on 8.8.2006 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs. 25,000/- without any surety undertaking to appear before the learned Magistrate on 8.8.2007.

(R. BASANT)
Judge

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